SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/15/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000522

FILED: _____

BERNARD JOSEPH HUFFMAN

WM MICHAEL YOHLER

v.

STATE OF ARIZONA

ROY E HORTON

MESA CITY COURT
REMAND DESK CR-CCC

MINUTE ENTRY

MESA CITY COURT

Cit. No. #758297

Charge: 1. DUI-IMPAIRED TO SLIGHTEST DEGREE
2. W/BAC .10 OR ABOVE IN 2 HRS
3. FAIL TO DRIVE IN A SINGLE LANE
4. EXTREME DUI

DOB: 07/12/73

DOC: 02/23/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A). This case has been under advisement and the Court

has considered and reviewed the record of the proceedings from the Mesa City Court and the memoranda submitted by the parties.

Appellee, Bernard Joseph Huffman, was stopped by Mesa City Police on suspicion of drunk driving. Appellee is deaf and apparently has a 5th or 6th grade reading level. Appellee communicated to police that he was deaf, but no interpreter was available. The officers conducted a breathalyzer and HGN tests and took him to the police station for a blood test. As a courtesy to Appellee, they stopped first at his apartment and informed his family of his arrest.

Throughout these events, Appellee communicated by reading lips and making verbal responses. Although both law enforcement officers felt that Appellee generally understood them and made appropriate responses to their questions, Appellee stated at the hearing in this matter that he was confused, had great difficulty reading the officers' lips, and understood very little.

At the police station, Appellee was informed of the Informed Consent law and given a copy of the Administrative Per Se Affidavit to read. Appellee responded that he had already taken a breath test, but did not protest further and allowed the police phlebotomist to draw his blood. At the hearing, Appellee alleged that he did not understand the officer's words or the written consent form. After the blood test, Appellee was released into the care of his father and a friend, both of whom communicated with him without use of sign language.

Appellee moved to suppress the blood test results under A.R.S. § 12-242(C), which requires police to provide an interpreter "in order to properly interpret any of the following: (1) Warnings of the person's constitutional privilege against self-incrimination as it relates to custodial interrogation. (2) Interrogation of the deaf person. (3) The deaf person's statement."[1] Appellee alleged at the hearing that

[1] A.R.S. § 12-242(C)

this statute requires the police to provide an interpreter to deaf persons being processed on DUI charges.[2]

The trial court ruled for Appellee, finding that "A.R.S. § 12-242(C) is applicable to the facts presented in this matter."[3] The State has appealed, claiming that A.R.S. § 12-242(C) is not applicable in this case because no warnings to or interrogation of Appellee occurred and Appellee was not required to give any statements. Appellee alleges that A.R.S. § 12-242(C) does apply because he was required to give a statement consenting to the implied consent form and because the DUI processing activities are similar to custodial arrest.[4]

Generally, a trial court's ruling on a Motion to Suppress must be reviewed under the standard of abuse of discretion.[5] The evidence must be reviewed in the light most favorable to upholding the trial court's decision.[6] However, where statutory interpretation is involved, the standard of review is *de novo*.[7] In this case, the appellate court does not reweigh the evidence.[8] Instead, the evidence is reviewed in a light most favorable to affirming the lower court's ruling.[9] The reviewing court must look only at whether there was substantial evidence to support the trial court's decision.[10] Only if there were no probative facts to support the verdict can Appellant prove the evidence was insufficient for the ruling.[11]

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2 *See* R.T. of June 27, 2001, at p. 58 l. 17 through p. 59 l. 9.

3 Minute entry dated June 30, 2001, at p. 6.

4 R.T. of June 27, 2001, at p. 59, ll. 14-19.

5 State v. McKinney, 185 Ariz. 567, 577, 917 P.2d 1214, 1224 (1996).

6 *Id*.

7 In re Kyle M., 200 Ariz. 447, 448, 27 P.3d 804, 805 (Ariz.. App. 2001). See also, State v. Jensen, 193 Ariz. 105, 970 P.2d 937 (App. 1998).

8 *Id*.

9 27 P.3d at 805; State v. Fulminante, 193 Ariz. 485, 492-3, 975 P.2d 75, 82-83 (1999).

10 State v. Pittman, 118 Ariz. 71, 574 P.2d 1290 (1978).

11 State v. Carter, 118 Ariz. 562, 578 P.2d 991 (1978); State v. Barnett, 111 Ariz. 391, 531 P.2d 148 (1975).

Both Appellant and Appellee agree that the warnings requirement of A.R.S. § 12-242(C) is not applicable to this case. As Appellant correctly notes, the Arizona Court of Appeals has held routine booking questions and answers are not subject to *Miranda*.[12] Similarly, traffic stop questions and answers do not fall within the parameters of *Miranda*.[13] The logical extension of these holdings is that post-stop DUI investigations are not subject to *Miranda*. The United States and Arizona Supreme Court holdings regarding defendants' refusals to take blood alcohol tests both affirm this.[14] Therefore, Appellee was not required to be given an interpreter under the statute.

Finally, there is the issue of whether the police officers were required to provide an interpreter to Appellee to interpret his statements under the third provision of the statute. In this case, the category of "statements" would potentially include both Appellee's communications with the police officers and his consent or refusal to take the blood test. As the Arizona Court of Appeals has noted, "[e]vidence which is testimonial or communicative is that which reveals the subjective knowledge or thought processes of the subject. Field sobriety tests do not involve either."[15] Clearly, using this definition of communication, Appellee's conversations with law enforcement after they stopped him were non-communicative. The officers were speaking with Appellee in order to determine if he was intoxicated, not to obtain knowledge or insight into his thought processes.

The Arizona Supreme Court has held that refusing to take a blood test for DUI is not a communication, it is a physical

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12 State v. Jeney, 163 Ariz. 293, 298, 787 P.2d 1089 (1990).

13 Berkemer v. McCarthy, 468 U.S. 420 (1984).

14 South Dakota v. Neville, 459 U.S. 553 (1983) (holding Miranda does not apply to statements regarding or refusal to take a chemical test); State v. Campbell, 106 Ariz. 542, 479 P.2d 685 (1971). See also State v. Gilliland, 149 Ariz. 601 (1986) (failure to warn defendant that his refusal to take a chemical test could be used against him does not offend fundamental due process).

15 State v.. Theriault, 144 Ariz. 166, 167, 696 P.2d 718 (App. 1984).

act.[16] By extension, therefore, consenting to a DUI blood test is similarly a physical act. Therefore, no "statement" is involved. Additionally, under the clear language of A.R.S. § 28-1321, there is no requirement that the alleged violator must orally respond to law enforcement after the informed consent notice is provided to him. Instead, the language of the statute focuses only on what the officer must do -- he must be requested to submit to the test and informed of certain penalties for failure to do so and of the consequences if he fails the test.[17]

Under both the case law and the clear language of the statutes at issue, the trial judge clearly erred in granting Appellee's Motion to Suppress.

IT IS THEREFORE ORDERED reversing the judgment of the Mesa City Court in this case.

IT IS FURTHER ORDERED remanding the matter for a new trial in the same trial court.

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[16] Campbell, 106 Ariz. at 549. See also, Neville, 459 U.S. at 560-61.
[17] A.R.S. § 28-1321(B).